

## IRS Collection: What Are Your Options? Questions and Answers from the July 15, 2009 National Phone Forum

These responses are provided within the context of the information presented during the National Phone Forum and are intended to clarify points discussed in the presentation. Due to the public nature of this Q&A, we are able to respond only to general questions relating to the presentation, so some questions were omitted. If you have account questions or client issues, please call the IRS.

Other questions were edited for brevity, clarification or to remove specific identifying references. The responses below should not be considered official guidance independent of the presentation. To avoid potential misinterpretation, this document is provided only to those who participated in the forum and should not be otherwise distributed.

**This information is current as of Oct. 7, 2009.** Since changes may have occurred, no guarantees are made concerning the technical accuracy after that date. Thank you for your professional consideration.

### Offers in Compromise

**Q1. I have been asked to file returns for a taxpayer who has no assets, little income, and owes many years of taxes. After all tax returns past due are filed, can an OIC immediately submitted or should the OIC be filed after the returns are processed and notices are received by the taxpayer? Also, when filing an OIC, is an estimated tax payment necessary to be considered current if the taxpayer had \$3,000 of self employment income during the 2nd quarter of 2009?**

- A. Taxpayers may submit, and the IRS will consider, an offer to compromise taxes due on returns which have been filed but have not yet been assessed. If the offer in compromise is received before the returns are pending or assessed, the offer will be returned.

Taxpayers must be up to date with estimated tax payments for the current year at the time the offer is filed and throughout the offer investigation. For individuals the amount of the estimated tax payment due is based on 100% of the prior year's tax or 90% of the current year's tax due at the time the offer in compromise is filed, whichever is less. To figure the current estimated tax due, see Publication 505, *Tax Withholding and Estimated Tax*, and Publication 334, *Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)*.

**Q2. What are some other options if an OIC is rejected?**

- A. If an offer in compromise is rejected, the taxpayer has 30 days from the date of the rejection letter to file a formal appeal. If the taxpayer does not wish to appeal the rejection determination, they may speak with the offer investigator about possible alternative resolutions; such as an installment agreement. If the offer investigator is unable to assist the taxpayer with an alternative resolution, they will refer the taxpayer to the appropriate contact. See Publication 594, *The IRS Collection Process*, for more information about possible collection alternatives available to the taxpayer.

**Q3. If a self-employed taxpayer submitted an OIC for several years, essentially compromising SE tax (minimal or no income tax), will the taxpayer be credited for social security and Medicare taxes for the compromised self employment taxes?**

- A. Yes, the taxpayer will receive credit for the amount reported on their tax return, whether collected or paid. In some instances, the IRS may determine that an adjustment to the assessed liabilities is in order and any changes to the original data will affect the initially reported Social Security and Medicare credits at that point. However, if the offer has already been accepted, those adjustments cannot be made due to the contractual nature of the accepted OIC. Social Security and Medicare records would remain as originally reported.

**Q4. If a contractor owes more than \$75,000 for Form 941 taxes, including penalties and interest, would they be considered a good candidate for an OIC if they could submit \$35,000 with their Form 656 and can show they have little or no equity in assets? Or would an installment agreement be a better option?**

- A. IRM 5.8.1.1 states: IRS will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. It goes on to say, "In cases where an OIC appears to be a viable solution to a tax delinquency... The taxpayer will be responsible for initiating the first specific proposal for compromise." The taxpayer must make an adequate compromise proposal consistent with their ability to pay. They will be given the opportunity to increase the OIC amount if the reasonable collection potential is determined to be more than the amount offered. Offers will not be accepted if it is believed that the liability can be paid in full through an installment agreement extending through the remaining statutory period for collection, or other means of collection, unless special circumstances exist.

**Q5. Is an OIC acceptable for previous payroll taxes due? If so, please provide an example of a case where an OIC would be accepted and the contractor would be allowed to go forward.**

- A. The type of tax is not the deciding factor on whether an offer is a solution to a tax debt. An offer should be considered as a viable solution if it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. Offers will not be accepted if it is believed that the liability can be paid in full as a lump sum, installment payments extending through the remaining statutory period for collection, or other means of collection, unless special circumstances exist. Each offer is investigated and a determination is made based on its own merit and circumstances, no examples can be provided.

**Q6. Provide examples and reference citations for research purposes, regarding situations that would qualify as a special circumstance for granting an OIC due to economic hardship, compelling public policy or equity considerations.**

- A. Unfortunately, no specific examples can be provided since each case is considered under its own merit and consideration of special circumstances. The citation for special circumstances for an offer in compromise is IRM 5.8.11, Effective Tax Administration. Within that IRM section, are examples and basis for application of special circumstances and effective tax administration procedures.

**Q7. Should more than one check be submitted with the OIC if I'm not sure of the total amount that IRS will accept as an appropriate offer amount or the number of installments? Since some amount is required – should this be the minimum amount we believe the IRS will accept?**

- A. If one makes a cash offer 20% of the total amount offered should be submitted. If the offer will be paid in installment payments, one must submit the initial payment and continue making the proposed payments throughout the investigation. A single payment for the total amount of the offer is not required. The taxpayer is responsible for initiating the first specific proposal for compromise and the offered amount should reflect their calculated reasonable collection potential. If the final investigation reflects the taxpayer could pay more, the taxpayer will be given the opportunity to increase the offer amount. The full amount of the offer would then be due at the time of acceptance, depending on the agreed terms.

**Q8. Are there guidelines for the dollar amount to be submitted for an OIC? What happens to the down payment submitted if the IRS determines that the amount the taxpayer sent in did not meet the required amount?**

- A. If a cash offer is sent, it must include 20% of the total amount offered. If the offered amount is to be paid in installment payments, the initial payment must be included with the offer and the taxpayer must continue making the proposed payments throughout the investigation. The taxpayer must make an adequate compromise proposal consistent with their calculated reasonable collection potential. All payments are applied to the liability(s) and are nonrefundable.

**Q9. Is there a minimum dollar limit for which the IRS will not consider an OIC? If so, what is dollar amount for which IRS will consider an OIC?**

- A. The IRS does not have a minimum or maximum dollar limit for to qualify for an OIC. There is no limit on the amount of the liability. However, an offer cannot be considered if the offered amount is zero. The taxpayer must make an adequate compromise proposal consistent with their calculated reasonable collection potential.

**Q10. Is credit card debt considered a deductible expense when calculating personal deductible expenses for an OIC? Also, can payments and fees paid to a debt management company considered a deductible expense?**

- A. Credit card debt is an unsecured debt. Credit card debt is not an allowable expense for purposes of determining the reasonable collection potential for an OIC. Generally, payments and fees paid to a debt management company will not be considered as an allowable expense.

**Q11. Please clarify that if a taxpayer obtains a loan to fund an OIC, the monthly loan payment would indeed qualify as an allowable expense for purposes of calculating the RCP in the income and expense section of the analysis.**

- A. Generally, if the loan is secured to fund the OIC and the taxpayer provides documentation of that fact, the loan payments would be allowed as an expense when calculating the RCP.

**Q12. Does a taxpayer who currently has a wage garnishment qualify for an OIC? If the OIC denied, what happens to the payment submitted?**

- A. A wage levy does not prevent a taxpayer from submitting an OIC. If the OIC is rejected, all payments received during the investigation of the OIC will be applied to the liability.

**Q13. Explain the comparison made of when tax liens are removed in the PPIA process vs. the OIC process. When, exactly, are the tax liens removed during the OIC process?**

- A. For an OIC, the Notice of Federal Tax Lien is released within 30 days of meeting the terms of the accepted OIC or the liability is paid in full, whichever comes first. For a PPIA, the lien is not released until the statute of limitations expires or the liability is paid in full, whichever is earlier.

**Q14. What should a taxpayer do when there is a wage garnishment for tax due and wants to make payments on the amount offered in the OIC, but cannot afford to make both payments?**

- A. There is no requirement for the release of a levy that was served prior to the offer submission. The taxpayer's circumstances should be considered when making a determination to release a levy or keep it in place while the offer is pending.

**Q15. Is it true that when an OIC is accepted and paid in full, the IRS keeps refunds claimed on Form 1040 for 10 years following when the OIC was paid?**

- A. The IRS will keep any refund including interest due the taxpayer because of overpayment of any tax or other liability, for tax periods extending through the calendar year in which the IRS accepts the offer.

**Q16. Since the amount acceptable for an OIC is the net value of current assets plus the income potential of a period of time (48 months), does this also mean that it is expected that the only way to make that offer is to be able to borrow the amount of the income potential from a source without collateral? Wouldn't the funds available to cover the income potential be considered part of the current net assets?**

- A. (1) The taxpayers' offer (absent special circumstances) must equal Reasonable Collection Potential, which includes equity in assets and future income value. IRS does not advise the taxpayer whether they should borrow the funds or what assets should be pledged as collateral. In certain instances, the offer amount will be provided by third parties who are willing to loan or gift the amount needed to fund the offer and not require collateral. When a taxpayer is unable to fund a cash offer, the offer terms may also provide for payment of equity in assets over a period of time by submitting deferred payments.
- A. (2) The equity in assets does not include future income potential. As an example, the taxpayer has been making payments from their past income on a mortgage over a number of years. These payments have increased the equity in that asset. Future payments would also increase that equity, so rather than determining the possible future equity based on the payments, a calculation based on necessary living expenses is used to determine the future income value.

**Q17. If an individual cannot pay his debt due to financial capacity (no assets and income is insufficient), should he request an OIC?**

- A. IRS will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. Generally, an offer amount must equal or exceed a taxpayer's reasonable collection potential in order to be acceptable. The exceptions are when special circumstances have been proven and warrant acceptance for less than the amount of the calculated RCP.

**Q18. Explain the requirements for making tax deposits while applying for or when an OIC is accepted. Does this also include the trust fund portion of withholding taxes? Also, if an OIC is accepted, and then required monthly payments stop, is the OIC cancelled? If so, how can the OIC be reinstated or continued?**

- A. Taxpayers must remain in compliance while the offer is being considered. An untimely federal tax deposit made after assignment to an employee investigating the offer and during the investigation will result in a return of the offer. It is necessary for the taxpayer to be current with federal tax deposits the quarter that the offer was submitted and remain in compliance with the filing and deposit requirements during the offer process. Regarding default and reinstatement see Q&A 22.

**Q19. Is it true that there is a process of audit reconsideration when there is doubt of liability for a tax return? How is this different than an OIC or collection due process hearing? Provide statutory/regulatory citations/procedures.**

- A. In addition to a doubt as to collectability OIC there is a doubt as to liability OIC, Form 656-L. IRC Section § 7122 grants broad authority to the Secretary of the Treasury to compromise tax liabilities. Treasury Regulation § 301.7122-1, is the authority to compromise a liability on any one of three grounds: Doubt as to collectability, doubt as to liability, or to promote effective tax administration. A collection due process hearing is a procedure to allow consideration of relief from a collection action, such as a proposed levy or filing of a federal tax lien. The documentation for a doubt as to liability OIC depends on the type of liability requesting to be compromised. This list below is generally the type of documentation requested:
- copies of examination reports and substantiation for the examination finding(s) which the taxpayer believes is incorrect
  - original tax returns if the taxpayer disputes a Substitute For Return assessment
  - documentation to support reasonable cause claims for penalty offers

**Q20. Explain the ETA basis of requesting an Offer In Compromise.**

- A. The ETA offer allows for situations where tax liabilities should not be collected even though:

- The tax is legally owed, and
- The taxpayer has the ability to pay it in full

No compromise to promote ETA may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws. An ETA offer can only be considered when IRS has determined that the taxpayer does not qualify for consideration under doubt as to collectability or doubt as to liability.

**Q21. Is there anyway to have the interest/penalty forgiven due to economic hardship so the taxes due can be paid?**

- A. In the interest of ETA and equity, abatement of penalties based on reasonable cause must be made in a consistent manner and should conform to reasonable cause considerations specified in the Internal Revenue Code, Treasury Regulations, Policy Statements (P-2-7 and P-1-18), and IRM 20.1. Reasonable cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations but is unable to comply with those obligations due to circumstances beyond their control. Each case must be judged individually based on the facts and circumstances. Form 843 may be used to request the abatement. There are no provisions for interest forgiveness due to economic hardship.

**Q22. Is there any way to have a defaulted OIC reinstated other than reapplying? Are there any other options for a defaulted OIC?**

- A. Once an offer has been identified as a potential default, the IRS will allow the taxpayer an opportunity to comply with the terms of the offer before defaulting. Once the offer is defaulted, the taxpayer must submit a new OIC and new Form 656.

**Q23. IRM, 5.8.9.4(1)(a) permits modifications of an existing OIC. The procedures outlined indicate that the taxpayer should make the proposed payments in lieu of the original agreed monthly payments during the review/approval process of the new OIC terms. If a requested modification has been denied, what happens to the original OIC? The denial pattern letter (Exhibit 5.8.9-3 Pattern Letter 1607(P)) does not address a “catch up” situation for the shortage of payments made while the modification was being considered.**

- A. If the taxpayer's proposal is denied and the terms of the original accepted OIC are not met, the OIC will be defaulted.

**Q24. (2)How then can a recommendation be made to deny/default an accepted offer, requiring full “catch up” of the terms of the offer, when the IRM permits the taxpayer to make a proposal and live up to the terms of the proposal during the investigation, based upon a compliance issue in a non related entity?**

- A. An OIC that has been accepted for 1040 liabilities will not be defaulted because of a delinquency of the closely held corporation. However, once the taxpayer submits a proposal for an offer on an accepted offer and the new investigation determines the closely held corporation is not current with filing or payment requirements then the IRS has the latitude to deny the taxpayer's proposal.

**Q25. Are there any nonprofit organizations that help people with offer in compromise?**

- A. Low Income Taxpayer Clinic represent low income taxpayers before the IRS in audit, appeals, and collection issues, for free or for a nominal charge. Information on the location of LITCs by state is available on at [IRS.gov/](http://IRS.gov/).

### **Installment Agreements**

**Q26. Can you provide a brief comparison of a PPIA, IA and OIC? What type of payments agreement should a taxpayer request?**

- A. - PPIA = Partial Payment Installment Agreement. An IA that will not pay the full liabilities within the collection statute.  
- IA = Installment Agreement. Will full pay the liability within the CSED.  
- OIC = Offer in Compromise. Not a type of IA. Taxpayer offers an amount less than the full balance due that the IRS will accept as full payment.

Please note that although the taxpayer can request an IA, the taxpayer cannot request a PPIA; only the IRS can make that determination.

However, the taxpayer can request to pay their installment agreement by two alternative methods: a Direct Debit Installment agreement (DDIA) that will result in a monthly automatic draft from the taxpayer's bank account, which results in a reduced IRS user fee; or with the cooperation of their employer a Payroll Deduction Agreement can be requested.

**Q27. Define CSED and NFTL.**

- A. CSED: Collection Statute Expiration Date – The date at which a tax debt is no longer enforceable by statute. The period of collection is *usually* ten years from the date of assessment.

NFTL: Notice of Federal Tax Lien – Instrument by which the government's interest is recorded in relation to the tax debt owed by the taxpayer.



**Q28. How does a taxpayer enter into a PPIA? What is used to determine the best payment method for past due taxes?**

- A. Whether a PPIA is appropriate is an IRS determination. A taxpayer cannot request a PPIA. If a taxpayer cannot full pay the tax debt, a financial analysis is completed to determine the best method of resolving the tax matter. If it is determined that an installment agreement is the best method of resolving the tax matter, but the payments will not fully pay the debt within the statutory period for collection, then a partial payment installment agreement will be considered.

**Q29. How does a taxpayer who has a PPIA or OIC request a modification to their agreement based on a significant decrease in income?**

- A. For PPIAs, changes in income or expenses that impact the taxpayer's ability to pay will be taken into consideration. In these circumstances the taxpayer should contact the IRS at the number provided on the agreement to request a modification.

For OICs, changes in income or expenses that impact the taxpayer's ability to pay will also be taken into consideration. Taxpayers who are experiencing financial difficulty may contact the IRS to request a modification to their offer in compromise. The IRS contact number is determined by the taxpayer's state of residence:

**Memphis: (901)546-4803**

Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Puerto Rico, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia, District of Columbia, and International

**Brookhaven (631)447-4018**

Alaska, Alabama, Arizona, California, Colorado, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, Montana, Nevada, New Mexico, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, Wyoming

**Q30. Is it possible to get a lien released for a joint tax liability owed where the primary taxpayer is now deceased and the living taxpayer's only income is social security?**

- A. A Certificate of Release of the Notice of Federal Tax Lien will not be issued if there is still a balance due on the account.

**Q31. What options are available for someone who owes a large tax liability, but also has a significant amount of savings used for living expenses? Will the IRS require that savings be used to pay off a tax liability? Or can other arrangements be made to cover the tax due? The taxpayers have several assets with negative equity due to the real estate market decline. Will the IRS levy or place a lien on their savings account, which is used to pay their mortgages on existing assets? By how much or what percentage will the IRS require the taxpayers to take from their savings? Does the IRS expect clients to sell assets when entering into an installment agreement?**

- A. These questions cannot be answered by the IRS without considering in detail the specifics of each individual case. Collection determinations are generally guided by financial analysis and documentation. Asset equity, cash on hand, and lien filing are among the factors that will be considered, based on guidance related to specific types of individual circumstances, whether or not an installment agreement is determined to be the best case resolution.

**Q32. What are the steps to apply for an installment agreement for multiple years?**

- A. When applying for an installment agreement (IA), all periods will be taken into consideration by the IRS. One request for an IA should include all periods owed by the taxpayer. Follow the instructions on form 9465 to ensure that all required information is provided in order to have the request taken into consideration by the IRS.

**Q33. What happens if an installment agreement exists when a subsequent tax return with a balance due is filed and the taxpayer cannot pay the subsequent tax due? What steps should the taxpayer take to prevent default of the IA? Will the IRS include the new tax liability with the existing installment agreement?**

- A. Taxpayer should contact the IRS to attempt to have the new period added to the existing IA.

**Q34. Are Installment Agreements available to businesses past due for payroll tax liability payments? What form is used since Forms 9465 and 433-D contain fields only for individual names and TIN's. What is the difference between Forms 9465 and 433-D? What type of taxes can be paid by installment agreement?**

- A. Yes, such agreements may be made available. Contact the IRS to request the IA. All taxes may be included on an IA.

**Q35. If a person enters into an installment agreement, are state refunds applied in addition to the federal tax refunds instead of being refunded to offset the liability?**

- A. No, state tax refunds are not remitted by the individual states to offset federal tax liabilities.

**Q36. How long should a taxpayer wait to see if his installment agreement request has been accepted?**

- A. The IRS can normally process an IA request within 60 days. However, during the peak filing season it may take up to 90 days. The IRS issues a letter to these taxpayers after 45 days to inform them that their proposal is under consideration.

**Q37. Explain situations when a taxpayer's representative may not have to submit financial information because of the information gathered on the IRS system for a PPIA. Can IRS claims be challenged?**

- A. When a PPIA is being considered a full financial analysis must be conducted to determine the correct ability to make payment. By statute, every two years a PPIA is subjected to financial review to determine if the taxpayer's ability to pay has changed. This financial review is done systemically for the majority of taxpayers who have been granted a PPIA. However, when sufficient information is not available on our systems, the IRS will require financial information be submitted by the taxpayer (or representative).

The second question cannot be answered without further specifics, since there are many kinds of claims.

**COBRA Subsidies**

**Q38. Can someone who is unemployed and paying for more than 50% of their medical coverage as an early retiree through their employer claim the Health Coverage Tax Credit in 2009? The employer pays less than 50% of the coverage, and it is not COBRA.**

- A. Under the new provision, group health plans must generally treat assistance eligible individuals (AEI) who pay 35 percent of the premium otherwise payable for COBRA continuation coverage as having paid the full amount of the premium. The employer (or, in certain circumstances, the multiemployer health plan or the insurer) is reimbursed for the other 65 percent of the premium that is not paid by the assistance eligible individual through a credit against its payroll taxes. An AEI is generally an individual (1) who is a qualified beneficiary as the result of an involuntary termination during the period from September 1, 2008, through December 31, 2009, (2) who is eligible for COBRA continuation coverage at any time during that period, and (3) who elects the coverage. As noted in the second and third requirements, to be an AEI there must be a COBRA continuation plan that the former employee can elect to purchase and the former employee elects the COBRA continuation coverage. If the coverage being provided by the former employer is not COBRA continuation coverage, then the retired employee is not eligible for the subsidized COBRA premium. The subsidy applies only to premiums for "COBRA continuation coverage" as defined under the COBRA statutes.

**Q39. A taxpayer's employer is going out of business, but is currently paying medical insurance premiums for two employees, and reports it on the W-2. Will the employees be eligible for COBRA once the employer goes out of business, and will no longer file Form 941? Are there any other procedures that will provide COBRA?**

- A. No. In order for the COBRA continuation coverage premium reduction and the related payroll tax credit to apply, the plan must be subject to the COBRA continuation coverage requirements as defined in ARRA. See Notice 2009-27, Q&A-16. The subsidy applies only to premiums for "COBRA continuation coverage" as defined under the COBRA premium subsidy provision. Under this definition, COBRA continuation coverage consists of federal COBRA under the Internal Revenue Code or the Employee Retirement Income Security Act of 1974, which generally apply to plans of private employers (other than churches) with at least 20 employees, or under the Public Health Service Act, which applies to plans of state or local government employers with at least 20 employees; temporary continuation coverage under the Federal Employees Health Benefits Program; and state law continuation coverage requirements that are comparable to the federal COBRA requirements, often referred to as state "mini-COBRA" laws.

**Q40. Is an employee who is laid off but continues to receive severance payments with withholdings eligible for the 65% reimbursement of COBRA once the severance runs out. The employee is not eligible to collect unemployment after the severance pay ends.**

- A. Yes, as long as the employee was involuntarily terminated after September 1, 2008, and the loss of health coverage under the severance package occurs prior to December 31, 2009. See Notice 2009-27, Q&A 13 and 14 for more information. If both of these events have occurred, then the former employee does not have to wait until his severance payments end before he can obtain subsidized COBRA.

**Q41. What are the qualifications and eligibility requirements for COBRA? Expand on the 20 employee requirement. How are employees counted? (full time, part time, currently insured)**

- A. See the prior question 39 regarding basic eligibility requirements for the COBRA subsidy.

For questions on whether an individual is eligible for COBRA continuation coverage in general, see [http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.html/](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html/). Question 3 on this Web site states: "Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full time.